



An  
Bord  
Pleanála

## Board Order ABP-319996-24

### Planning and Development Acts 2000 to 2022

**Planning Authority:** Dún Laoghaire-Rathdown County Council

**Planning Register Reference Number:** D23A/0752

**Appeal** by Tom and Victoria Maughan care of BPS Planning and Development Consultants of PO Box 13658, Dublin and by Others against the decision made on the 5<sup>th</sup> day of June, 2024 by Dún Laoghaire-Rathdown County Council to grant permission, subject to conditions, to Amberfield Homes Limited care of Doyle Kent Planning Partnership Limited of 71 Carysfort Avenue, Blackrock, County Dublin for the proposed development.

**Proposed Development:** Permission was previously granted for four houses at Brighton Grove per register reference number D18A/0143 of which three houses have been constructed numbers 1, 2 and 4. The development will consist of the omission of the permitted house (D18A/0143) at site number 3 Brighton Grove to provide vehicular and pedestrian access to the site to the rear from the existing vehicular access on Brighton Road, the demolition of Primavera and Phoenix House (total demolition area 888 square metres Gross Floor Area) and the construction of a housing scheme on a development site area of 0.79 hectares. The proposed development with a total gross floor area of 7,206 square metres (excluding basement area) will consist of 48 residential units including 10 number three-storey houses and 38 number apartments in a five-storey building over basement level and comprising: 10 number three-storey houses (consisting of nine number five bedroom units - three double and two single, and one number five bedroom unit – five number

double bed) together with private amenity open space ranging from 75 square metres to 147 square metres, bike and bin stores and two car parking spaces per dwelling. 38 number apartments (consisting of 10 number one bedroom units (two person), 24 number two bedroom (four person) units and four number three bedroom (five person) units, bicycle parking (70 long stay resident spaces) and a bin storage area at ground floor level of the building, basement level below apartments (1,767 square metres) with 40 car parking spaces, 22 electric vehicle charging points, two motorcycle spaces, residential storage units and plant rooms. Six surface carparking spaces (three accessible spaces and three visitor spaces with two electric vehicle charging points) and eight number visitor bicycle parking spaces. The development will also consist of the provision of public open space and related play areas (1,276 square metres), hard and soft landscaping including internal road, cycle and pedestrian routes, pathways and boundary treatments, street furniture, ESB substation building, piped infrastructural services and connections to existing public services, (including connecting new surface and foul water sewer and water main to the public network on public roads) ducting; waste management provision, SuDS measures including green roof; stormwater management and attenuation; solar PV panels at roof level to the apartments, signage; public lighting; and all ancillary site development and excavation works above and below ground. The site includes Primavera and Phoenix House located to the rear of Brighton Grove and lands between numbers 2 and 4 Brighton Grove at Brighton Grove, Primavera and Phoenix House, Brighton Road, Foxrock, Dublin, as revised by further public notices received by the planning authority on the 9<sup>th</sup> day of May, 2024.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

The proposed development is located on lands zoned 'A - To provide residential development and improve residential amenity while protecting the existing residential amenities'. Having regard to the zoning of the site, and its location circa 800 metres from a Luas stop and noting the existing dwellings on the site are not of particular architectural merit, the principal of demolition and intensification of residential use on the application site is considered acceptable. Also having regard to the location of the site partly within, but mostly outside of the Foxrock Architectural Conservation Area (ACA), and subject to compliance with the conditions set out below, it is considered that the proposed development is of a scale, form, density and design which would not detract from the character or setting of the Foxrock ACA or protected structures in the vicinity, would not seriously injure the residential amenities of property in the vicinity or the visual amenities of the area, would be acceptable in terms of traffic safety and convenience, and would be in accordance with the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 9<sup>th</sup> day of May 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The glazing on the northern elevation of the northern-most dwelling, and the southern elevation on the southern-most dwelling shall, where above ground level, be permanently fitted with obscure/frosted glass.
- (b) The roof areas of the apartment block, other than identified terraces/roof gardens for the penthouse units, shall be accessed for maintenance purposes only and shall not be used as private or communal amenity space or purposes.

**Reason:** In the interest of residential amenity and in the interest of clarity.

3. The mitigation measures recommended in the submitted Ecological Impact Assessment Report shall be implemented in full.

**Reason:** In the interest of the protection of ecology and the environment.

4. (a) Details of the materials, colours and textures of all the external finishes to the proposed structures, and
- (b) details of the materials, colours and textures of the shared carriageway (shall comply with Design Manual for Urban Roads and Streets (DMURS) requirements),

shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity and to ensure an appropriate high standard of development.

5. The development shall not be gated.

**Reason:** In the interest of permeability and in building communities.

6. Parking for the development shall be provided in accordance with a detailed parking layout which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The detailed parking layout shall provide for, inter alia, EV charging points to the satisfaction of the planning authority.

**Reason:** To ensure adequate parking provision is available to serve the proposed development.

7. Cycle parking for the development shall be provided in accordance with a detailed cycle parking layout which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure adequate bicycle parking provision is available to serve the proposed development.

8. (a) Prior to the commencement of development, the developer shall submit
- (i) a statement of Design Manual for Urban Roads and Streets compliance and
  - (ii) a Stage 2 Road Safety Audit

for the proposed development, setting out any required modifications, for the written agreement of the planning authority. The requirements of the audit shall be implemented in full by the applicant/developer.

- (b) A Stage 3 Road Safety assessment shall be carried out upon completion of construction and submitted for the written agreement of the planning authority. The requirements of the audit shall be implemented in full by the applicant/developer.

**Reason:** In the interests of orderly development and traffic safety.

9. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees within the development. Such lighting shall be provided prior to the making available for occupation of any residential unit.

**Reason:** In the interest of amenity and public safety.

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

11. Prior to the commencement of development, the developer shall appoint a qualified arborist as an Arboricultural Consultant for the entire period of construction. The developer shall inform the planning authority in writing of the appointment and the name of the Consultant and agree the consultant's brief, in writing, with the planning authority, prior to any mobilisation of plant, machinery or construction equipment.

**Reason:** To secure the protection of trees on the site, in the interest of visual amenity, residential amenity, the character of the area, ecology and biodiversity.

12. (a) The landscaping scheme shall be implemented in full, within the first planting season following substantial completion of external construction works and prior to the occupation of the new dwellings.
- (b) The developer shall appoint and retain the services of a qualified Landscape Architect throughout the life of the construction works. The developer shall inform the planning authority in writing of the appointment



and the name of the Landscape Architect and agree their brief, in writing, with the planning authority, prior to any mobilisation of plant, machinery or construction equipment.

- (c) All planting shall be adequately protected from damage until established. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting, shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species, unless otherwise agreed in writing with the planning authority.
- (d) Installation of attenuation tree pits shall be supervised by the project landscape architect.

**Reason:** In the interest of visual amenity, residential amenity, the character of the area, ecology and biodiversity.

- 13. All mitigation measures in relation to archaeology and cultural heritage as set out in the Archaeological Impact Assessment Report shall be implemented in full. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

- 14. Drainage arrangements including the attenuation and disposal of surface water and SuDS features shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and surface water management.

15. Prior to the commencement of development, the developer shall enter into a connection agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network. All development shall be carried out in compliance with Uisce Éireann's Standard Details and Codes of Practice.

**Reason:** In the interest of public health and to ensure adequate water/wastewater facilities.

16. Proposals for an estate/street name, house/apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

17. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include, but not be limited to, construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, traffic management, construction lighting, site housekeeping, public liaison management, emergency response planning, site environmental policy, and project roles and responsibilities.

**Reason:** In the interest of residential amenities, public health and safety and environmental protection.



18. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of reducing waste and encouraging recycling.

19. An Operational Waste Management Plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, within each house plot and/or for each apartment unit, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

20. (a) The communal open spaces, including hard and soft landscaping, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To secure the protection of trees on the site.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

23. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority [in relation to the transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

24. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual

purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

25. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

26. The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – Sandyford Depot to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.



**Tom Rabbette**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

**Dated this** 26<sup>th</sup> **day of** March **2025**